

Title 285 - NEBRASKA POWER REVIEW BOARD

Chapter 3 - RULES OF PRACTICE AND PROCEDURE BEFORE THE NEBRASKA POWER REVIEW BOARD

001 GENERAL. These rules govern practice and procedure before the Nebraska Power Review Board unless otherwise amended.

All correspondence and filings shall be addressed or delivered to the Nebraska Power Review Board. Office hours, for the purpose of filing papers, examining public records or transacting any business with the Board or its staff, shall be in accord with the normal business hours of State Government operation. When the filing of a pleading or the doing of any act is required on or before a certain date which falls on any Saturday, Sunday, or legal holiday, the time for filing said pleading or doing said act shall be extended to the next succeeding working day.

All records of the Nebraska Power Review Board are public records and are open for inspection at any time during regular office hours. Meetings shall be held as determined by the Nebraska Power Review Board at Lincoln, Nebraska, or any other place directed by the Board after proper notice. Hearings will be held in Lincoln, Nebraska, or upon motion of the Board, at any city the Board may determine.

ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

002 APPEARANCES BEFORE THE BOARD.

002.01. Practice of law before the Nebraska Power Review Board shall be governed by the statutes of the State of Nebraska and the decisions of the Supreme Court. Nothing herein contained shall prevent anyone from transacting his own business before the Board. In the event of an appearance by some person on the behalf of some other party, that person appearing must fulfill one of the two following conditions:

002.01a Be admitted to practice law before the Nebraska Supreme Court, or

002.02b Be admitted to practice law before the supreme court of any other state and be associated with a person admitted to practice law before the Nebraska Supreme Court.

APPROVED
Paul L. D...
ATTORNEY GENERAL
By
ASSISTANT ATTORNEY GENERAL
Date

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ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943: Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

003 PARTIES.

003.01. Parties appearing before the Board shall be designated as one of the following:

003.01a Applicants: In all proceedings involving applications under Sections 70-1001 to 70-1027, R. R. S., 1943, as amended, or subsequent amendments thereto, the party or parties on whose behalf the application is made are termed applicants.

003.01b Protestants: Party or parties objecting to the granting of an application are termed protestant or protestants.

003.01c Respondents: Party or parties ordered by the Board to appear in a proceeding, including complaint proceedings, shall be termed respondents.

003.01d Complainants: Any party filing a complaint under the provisions of Sections 70-1001 to 70-1027, R. R. S., 1943, or subsequent amendments thereto, shall be termed complainants.

003.01e Intervenor: Any person or party having an interest in any proceedings before the Board and who does not fall within the classification of the foregoing subsections may intervene and shall be termed as intervenors.

ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

004 PLEADINGS. For the purposes of definition, pleadings shall mean any written application or protest thereto; any petition of intervention; any complaint or reply thereto; or any motion.

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003.01e Intervenors: Any person or party having an interest in any proceedings before the Board and who does not fall within the classification of the foregoing subsections may intervene and shall be termed as intervenors.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S. 1943; Wiener v. State Real Estate Commission 184 Neb. 752, 171 N.W. 2d 783.

004 PLEADINGS. For the purposes of definition, pleadings shall mean any written application or protest thereto; any petition of intervention; any complaint or reply thereto; or any motion.

004.01 Before the Power Review Board approves any application to amend a retail service area agreement or wholesale agreement by electrical suppliers as part of an amalgamation in which one of the parties ceases to exist, the Power Review Board requires financial information from both parties. Such financial information shall include both historical financial statements of the separate suppliers and projected financial statements of the amalgamated supplier.

ENABLING LEGISLATION: 84-909, 70-628.01, 70-662, 70-663, 70-644, 70-665, 70-1002.01, 70-1006, 70-1009, and 70-1010 R.R.S. 1943.

005 FORMS OF PLEADINGS. Standard forms for applications and consents and waivers as illustrated in Section Two of the Board's rules shall be available upon request from the Board.

ENABLING LEGISLATION: 84-909, 70-1006, R.R.S. 1943; Wiener v. State Real Estate Commission 184 Neb. 752, 171 N.W. 2d 783.

006 PROTEST. A protest objecting to the granting of any application may be filed by any party and shall set forth the basis and the reasons for the protest. Such protests must be filed within twenty (20) days of the date of mailing of written notice of the application as prescribed under Rule 012 of the Nebraska Power Review Board's Rules of Practice and Procedure.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S. 1943; Wiener v. State Real Estate Commission 184 Neb. 752, 171 N.W. 2d 783.

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APPROVED

SEP 22 1988

KAY A. ORR, GOVERNOR

APPROVED
BY
ATTORNEY

AUG 2 1988

BY Linda L. Willard
Assistant Attorney General

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007 APPLICATIONS. Applications shall set forth a concise statement of the facts upon which the application is based, and a request for whatever action is being sought, together with whatever further information shall be required by the Board.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S 1943; Wiener v. State Real Estate Commission 184 Neb. 752, 171 N.W. 2d 783.

008 COMPLAINTS. A complaint, where applicable, may be filed by a person, organization, or corporation. The complaint shall set forth the name of the party complainant, the name of the parties against whom the complaint is made, a concise description of the problem or alleged violation, and any other facts necessary.

Where a complaint is filed with the Board under Section 70-1015 R.R.S. 1943, as amended, requesting that an injunction be brought in the name of the State of Nebraska, the Board will hold a hearing and thereafter making findings of fact and enter an order in conformity therewith. If the order of the Board determines that a violation has occurred, said order will be forwarded to the office of the Attorney General of the State of Nebraska for appropriate action.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S. 1943; Wiener v. State Real Estate Commission 184 Neb. 752, 171 N.W. 2d 783.

009 REPLY TO COMPLAINTS. A reply shall be the term used to refer to the pleading which will be permitted in way of any answer to a complaint, as referred to above. In the event of new material being contained in any reply filed in the latter instance, the complainant or complainants shall be permitted to file responsive pleadings.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S. 1943; Wiener v. State Real Estate Commission 184 Neb. 752, 171 N.W. 2d 783.

010 FILINGS. All pleadings filed before the Nebraska Power Review Board shall be stamped "Received" on the date presented or actually received if mailed to the Board.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S. 1943, Wiener v. State Real Estate Commission 184 Neb. 752, 171 N.W. 2d 783.

011 CERTIFICATE OF SERVICE. All pleadings, except original applications, shall be accompanied by a certificate by the party or parties, or their attorneys filing the same, showing service of a copy thereof on the

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SEP 22 1988

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Assistant Attorney General

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ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

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ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

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ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

011 CERTIFICATE OF SERVICE. All pleadings, except original applications, shall be accompanied by a certificate by the party or parties, or their attorneys filing the same, showing service of a copy thereof on the other party or parties involved in the matter or their attorney of record. No pleading will be accepted for filing without compliance with this rule.

ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

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012 NOTICE BY THE BOARD. Upon receipt and filing of any application or complaint, a notice shall be mailed by certified mail by the Executive Director of the Board to all interested parties showing the filing of said application or complaint and fixing the time and place for hearing upon the same. Protestants or respondents shall have twenty (20) days from the date of mailing of said notice in which to file a protest or a reply to the said application or complaint.

ANNOTATION

ENABLING LEGISLATION: 70-1005, and 70-1013, R. R. S., 1943; Supreme Court - City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W. 2d 629

013 FINAL ORDERS. Upon the close of any hearing, the Board shall render its decision within the time prescribed by statute.

ANNOTATION

ENABLING LEGISLATION: 70-1013, R. R. S., 1943; Supreme Court - City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W. 2d 629

014 WITHDRAWALS. Following the filing of any application or pleading, a party shall not be permitted to withdraw said application or pleading without the Board's approval. However, the Board encourages the voluntary settlement of all matters which may come before it.

ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

015 PREHEARING CONFERENCES. The Board may, at its discretion and with adequate notice to the parties thereto, order informal prehearing conferences for the purpose of narrowing the issues involved in the dispute and exploring the possibility for a voluntary settlement of the disputed matter between the parties. Any agreement or stipulation entered into by the parties or their attorneys shall be reduced to writing, signed by the parties or their attorneys, and made a part of the record of the disputed matter; PROVIDED THAT, the Board will not be bound by such stipulation or agreement unless the same has been approved by order of the Board.

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ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

016 PROCEDURE FOR HEARINGS. All hearings shall be conducted by the Board or by a hearing examiner who will, among other things, open the proceedings, enter into the record the notice of hearing, take appearances, hear the evidence, rule on motions and objections, interrogate, if deemed necessary, any witness and close the proceedings. When hearings are held before the Board, no specified number of Board members are required to be present.

ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 683

017 ORDER OF EVIDENCE.

017.01. Evidence will ordinarily be received in the following order:

017.01a Applicants or complainants

017.01b Protestants and respondents

017.01c Intervenors

017.01d Board staff

017.01e Rebuttal

ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

~~018 OPENING STATEMENTS: ORAL ARGUMENTS: BRIEFS. Opening statement and oral argument following the close of presentation of evidence will not be permitted unless specifically requested by the Board or its hearing examiner. Any party wishing to submit a brief of the matter presented at any hearing may do so.~~

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018 OPENING STATEMENTS: ORAL ARGUMENTS: BRIEFS. Opening statement and oral argument following the close of presentation of evidence will not be permitted unless specifically requested by the Board or its hearing examiner. Any party wishing to submit a brief of the matter presented at any hearing may do so.

019 MOTIONS FOR CONTINUANCE. Any party who desires a continuance shall file a motion in writing with the Board stating the reasons why such continuance is necessary. For good cause shown, the Board may grant a continuance and may at any may-at-any time order a continuance on its own motion.

020 MAILING OF ORDERS OF THE BOARD. All orders of the Board, following the close of any contested hearing shall be transmitted to the parties of record by certified mail. All other orders will be sent by regular course of mail. Motion for rehearing shall be filed within ten (10) days after the date of mailing a copy of the order by the Board to the party appealing and shall comply with Section 75-137 (2), R. R. S., 1943, as amended.

021 APPEALS. Any party may appeal from an order of the Board to the Nebraska Supreme Court as provided by law. The party appealing shall file a praecipe with the Board requesting a transcript of pleadings filed in the action from which the appeal is being perfected. The evidence as certified by the Court reporter and the Executive Director of the Board as a true bill of exceptions, accompanied by the pleadings contained in the transcript, shall constitute the complete record. The Executive Director of the Board will indicate on the transcript the appellant and appellee.

The appellant may in the alternative specify in the praecipe that less than all of such evidence be included in the bill of exceptions; such omission may be made only with the approval of the interested parties. The Executive Director of the Board shall forthwith deliver a copy of the praecipe with the attachments and endorsements thereon to the court reporter and to the Clerk of the Supreme Court.

The parties involved may amend the bill of exceptions by written stipulation which shall be attached to the bill of exceptions at any time prior to the time the matter is submitted to the Nebraska Supreme Court. This must be done in accordance with the existing statutes.

022 CONSOLIDATION. Where two or more proceedings are legally or factually related, they may be heard and considered together on a consolidated record, unless any party would be prejudiced thereby. Notice shall be given not less than twenty days prior to hearing.

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MAY 9 1986

Allen J. Beermann
Secretary of State

APPROVED:

Date 5-8-86

Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL

APR 16 1986

Assistant Attorney General

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023 EVIDENCE. The Board is not bound to follow the technical common law rules of evidence. Evidence shall be admissible which possesses probative value commonly accepted by reasonable men in the conduct of their affairs. Evidence which is cumulative or repetitious may be excluded by the Board or hearing examiner. Provided, however, the Nebraska Power Review Board shall be governed by the statutes governing the administrative agencies of the State of Nebraska, Chapter 84, Article 9 of the Revised Statutes of the State of Nebraska.

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MAY 9 1986

Allen J. Beermann
Secretary of State

APPROVED

Date *5-9-86*

Bob Kerrey
Governor

APPROVED
ROBERT M. SPIRE
ATTORNEY GENERAL

APR 16 1986

BY *[Signature]*
Assistant Attorney General

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024.03. Any party desiring to introduce into evidence any part or parts of the official files shall obtain copies thereof in advance of the hearing.

024.04. Upon demand by the opposing parties, any party proposing to introduce exhibits into evidence in any proceeding before the Board shall furnish copies of exhibits requested to said opposing party. Upon proof of demand to furnish and failure to supply the said exhibit, it will be excluded from the hearing unless good and sufficient reason be shown by the party offering the same for the failure to furnish said exhibit to the party demanding the same.

024.05. Relevant portions of books, papers, or documents, shall be plainly designated and distinguished from all irrelevant portions before the relevant material may be offered into evidence. Where the irrelevant material in the book, paper or document is voluminous so as to encumber the record, the book, paper or document may be marked for identification and the relevant material read into the record. Upon direction of the Chairman of the Board or the hearing examiner, a true copy of the relevant matter may be received as an exhibit in place of the original, PROVIDED THAT, copies are delivered to all parties of record and such parties are afforded an opportunity to examine the original from which the same may have been taken.

ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court *Weiner v. State Real Estate Commission*, 184 Neb. 752, 171 N.W. 2d 783

025 SUBPOENAS. Subpoenas requiring the attendance of witnesses will be issued by the Board, through the Executive Director of the Board or such person designated by the Board, upon written application of any party, or on order of the Board. Subpoenas for the production of papers, books or documents, unless directed by the Board, will be issued only upon application in writing. The subpoenas shall be served in the manner provided by law. All parties directed to produce such papers, books or documents shall deliver the same at the time and place specified by the Board to the Executive Director or other designated employee or agent of the Board.

ANNOTATION

ENABLING LEGISLATION: 70-1017, R. R. S., 1943

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026 DEPOSITIONS.

026.01. Depositions used in proceedings before the Board are governed by the following rules:

026.01a All depositions within this state shall be taken at least ten (10) days prior to the date of the hearing, and all depositions outside of this state shall be taken at least fifteen (15) days prior to the hearing date except for good cause shown in writing.

026.01b Depositions shall be taken in accordance with the rules of civil procedure.

026.01c The official taking the deposition shall promptly seal the same along with all exhibits in an envelope, endorsed with the title of the proceeding, and send the same by registered mail to the Executive Director of the Board. The deposition shall reach the Board, except for good cause shown, at least three (3) days prior to the date of hearing at which it is to be offered as evidence. The party taking the deposition shall give prompt notice of its filing to all parties of record.

ANNOTATION

ENABLING LEGISLATION: 84-909, R. R. S., 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783

027 INTERROGATORIES.

027.01. Written interrogatories may be served by any party to any proceeding before the Board upon any adverse party, with due regard to the time limits as hereinafter set forth, at any time prior to the hearing. No order of the Board shall be required in such matters. All interrogatives shall be signed separately and fully in writing under oath, and the answer shall be signed by the person making them. In the event that an objection for good cause is offered to any question propounded, the answer shall be deferred until the objection is determined. In propounding written interrogatories, the parties will follow the rules as hereinafter set forth, to wit:

027.01a The original copy of said interrogatories will be filed with the Board, together with an affidavit showing service by certified mail or delivery in person to the party or attorney of record to whom said interrogatories have been propounded. Said affidavit shall show the date of service.

proceedings, the Board shall not be bound by any strict rules of procedure except that any party called to appear shall have the right to be heard on any point raised in the investigation.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S. 1943 Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783.

029 MISCELLANEOUS RULES.

029.01 Denial of Application: When any application has been denied in whole or in part a subsequent application covering substantially the same subject matter will not be considered by the Board for a period of ninety (90) days from the date of the order entered, except for good cause shown. This provision shall not be construed to prevent any party from moving for a rehearing in any proceeding.

ENABLING LEGISLATION: 84-909, 70-1006, R.R.S. 1943, Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783.

029.02 Amendments: On or about July 1st and January 1st of each year, the Board shall consider changes, amendments and repeal of rules and regulations adopted and in effect prior to these dates. Any party so desiring may file an application proposing such amendment or repeal of said rules and said application will be considered and acted upon at the following review period in the manner provided by statute.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S. 1943, Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783.

029.03 Fees: Repealed. Laws 1978, L.B. 773, Section 1.

029.04 Costs of any hearing will be borne by the parties thereto in a proportionate share according to such parties' respective contribution to the record, unless otherwise ordered by the Board. If it is necessary for the Board to employ outside expertise to aide them in their determination, the cost of such expertise shall be assessed to the parties as determined by the Board.

ENABLING LEGISLATION: 84-909, 70-1006, R.R.S. 1943, Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783.

029.05 Whenever practicable, in cases where large or cumbersome exhibits are introduced and utilized at a hearing, the party introducing and utilizing the same shall provide the Board with a small reproduction suitable to filing of the same.

APPROVED

SEP 22 1978

KAY A. ORR, GOVERNOR

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AUG 8 1978

Assistant Attorney General

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ENABLING LEGISLATION: 84-909, 70-1006, R.R.S. 1943, Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783.

029.06 Whenever the rules or regulations as prescribed by the Board, or the statutes governing the Board, do not cover a question or given situation in regard to a procedural question, the Board shall be governed by the Rules governing administrative agencies of the State of Nebraska, Chapter 84, Article 9 of the Revised Statutes of the State of Nebraska.

ENABLING LEGISLATION: 84-909, 70-1006, R.R.S. 1943, Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783.

029.07 During the July meeting of the Power Review Board the Board will vote on the need for a power supply plan and/or conservation report. The Board, consistent with Section 70-1024, will request the Nebraska Power Association or an outside independent source to prepare the reports.

ENABLING LEGISLATION: 84-909, 70-1006, 70-1023, and 70-1024 R.R.S. 1943.

029.08 Any Petition for Creation or any amendment to any Petition for Creation of a district subject to Chapter 70, Article 6, filed with the Nebraska Power Review Board shall be accompanied by information about each existing and proposed subdivision. This information shall include: (1) the total population of the district, (2) the population of each subdivision, and (3) the percentage of the total population in each subdivision. The percentages of the total population in each subdivision shall be evaluated and stated: (a) as they exist currently, (b) as they are proposed in the petition, (c) as they would exist for the "mathematically ideal" case (the case in which the total population is divided by the number of subdivisions), and (d) as they would exist using forecasted populations for the subdivisions, if the petitioner believes such forecasted populations are relevant. The petitioner shall inform the Board as to whether the petitioner believes that the "substantially equal" language in Section 70-604 (6) is the relevant language, or the "not to be prejudiced thereby" language in Section 70-612 is the relevant language for evaluating the population divisions in the petition. The petitioner shall inform the Board if the district has exercised its authority to include or exclude areas so as to follow precinct or other boundaries.

ENABLING LEGISLATION: 84-909, 70-1006 R.R.S. 1943; Supreme Court - Weiner v. State Real Estate Commission, 184 Neb. 752, 171 N.W. 2d 783, 70-603, 70-604, 70-604.01, 70-604.02, 70-604.3, and 70-662 R.R.S. 1943.

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APPROVED

SEP 22 1988

RAY A. GILL GOVERNOR

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BY *Linda Wilford*
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